

HOW TO HIRE A LAWYER

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At a recent seminar on disability law I spoke to several people about their problems in retaining counsel. I heard complaints of lawyers who seemed disinterested in their cases or who lacked the skills to bring cases to completion. One woman advised that her lawyer was on a 54% contingency. Another person reported a contingency rate of 44%. WCB claimants and CPP disability claimants advised that for the most part they were unable to retain a lawyer at all.

1. Finding the Right Lawyer

Disability law is a narrow sub-specialty of civil litigation. Practice in this area requires medical knowledge, litigation skills, tenacity and the ability to empathize with your client's problems. It takes a special set of skills and grasp of the tactics to successfully take on large insurance companies. Few lawyers practice to any extent in this area.

Unfortunately many lawyers take on disability cases without the requisite knowledge or experience of how best to handle them. As a result these files often do not receive the attention they deserve and languish at the back of a file cabinet; or worse still they may be pressed forward without adequate preparation and without thought of the consequences.

The best way to find a lawyer who is proficient in disability law is by "word of mouth". Ask others with conditions similar to yours about their experiences with lawyers and ask for recommendations. Self help groups like the National ME/FM Action Network, Fibromyalgia support groups etc. keep lists of lawyers. Most provincial law societies have lawyer referral services and can direct you to a lawyer.

Avoid lawyers who advertise in the yellow pages or on television.

2. Contingency Agreements versus Fee for Service

A lawyer can either be hired on a contingency (percentage of recovery) or on an hourly rate. Virtually all disability claimants require a lawyer who will work on a contingency.

Not all lawyers take contingency cases. Some lawyers only work on an hourly rate. These lawyers will likely have little experience in disability cases.

Even a lawyer who accepts contingency cases will not accept all cases on that basis. In any such case the lawyer is taking a risk, putting at stake his or her time, money and firm resources. The lawyer must have confidence in your case and think it has merit before taking it on.

A contingency means your lawyer receives a fee only if you succeed in settling your claim or win at trial. You will still be responsible for disbursements (filing fees, cost of medical reports, transcripts etc.) in any event. The normal contingency fee is 33% with a slightly higher (usually 40%) if the case proceeds to the Court of Appeal.

Contingencies are negotiable. It is reasonable to ask for a sliding contingency (for example 20% if the case is settled before a Statement of Claim is filed, 25% if settled before Discoveries etc.) Just because the contingency agreement is presented in a polished and elaborate format, don't think it cannot be changed to suit your particular circumstances.

Do not agree to a contingency agreement in excess of 33%. The proposal of a higher percentage suggests your lawyer has little confidence in your claim or is over-charging. Find another lawyer.

A contingency agreement that is unreasonable may be set aside even after it has been signed. There are court rules and provisions in law society legislation for the variation of agreements that are either unfair or work unreasonably against the client.

3. Workers Compensation and Canada Pension Plan Benefits

My advice to claimants under WCB and CPP is that they should not hire a lawyer although for different reasons.

Workers compensation legislation has been designed to exclude lawyers from the process. WCB tribunals never award costs to a successful claimant, and the awards often refer to future benefits which cannot be used to pay contingency fees.

More importantly it is a sad fact that WCB tribunals seldom rule in favor of claimants after the initial denial. As a result few lawyers are prepared to take cases on a contingency unless there are unusual or compelling circumstances.

It is unwise to offer to pay a lawyer hourly fees to represent you on a WCB claim. Many lawyers will not even accept such a retainer because the likelihood of success is so slim.

The only realistic way a lawyer can be retained is through the support of a union. Some unions have a policy of assisting members in WCB claims that the union deems to have merit.

The best (and usually the only) choice for WCB claimants is to obtain representation through "Workers Advisors" or a similar government funded agency. Reports of the quality of such service are mixed but the likelihood of success with a workers advisor is probably no worse than with a lawyer.

Canada Pension Plan tribunals are much more fair minded than WCB but they likewise designed to make it unnecessary to have a lawyer represent you. The procedures are informal and the staff are helpful. CPP has stringent requirements for coverage, your disability must be "Prolonged and Severe" in order to qualify.

CPP seems more concerned with the content of medical opinions than in the evidence at the hearing. Therefore the best way to win a CPP appeal is to make sure that your medical evidence supports the CPP criteria. My advice to many people is to save the money they were about to pay to a lawyer and obtain a better medical report instead.

Lawyers are sometimes criticized as being mercenary and unfeeling. I have heard it said that "Everyone hates lawyers except the people who need one." Disabilities are difficult in all respects and disability law is no exception. The challenges of suing large insurers with endless resources can be daunting. It is my experience that the lawyers who practice in this area do so because they have a social conscience, and believe they are helping people who badly need their help.

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